



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 528

IN THE MATTER
OF
LIFE INSURANCE ASSOCIATION OF MASSACHUSETTS, INC.

Appearances: Wayne Barnett, Esq.
Counsel for Petitioner

John J. Curtin, Jr., Esq.
Counsel for Respondent

Commissioners: Wagner, Ch., Cassidy,¹ Roach, Dolan, Todd²

DECISION AND ORDER

I. Procedural History

On December 16, 1997, following an adjudicatory hearing, the Ethics Commission (Commission) concluded that the Life Insurance Association of Massachusetts (LIAM) violated G.L. c. 268A, § 3(a) on nine occasions between 1989 and 1993, by paying for dinners to legislators and to the Insurance Commissioner, and, in one instance, a set of golf clubs to a retiring legislator. The Commission levied a civil penalty against LIAM in the amount of \$13,500. This Decision was appealed to the Superior Court, which affirmed the Commission's Decision and Order. LIAM appealed the Superior Court Decision to the Supreme Judicial Court. The case was before the Supreme Judicial Court with a companion case of Scaccia v. State Ethics Commission, 431 Mass. 351 (2000) (Scaccia). In light of its decision in Scaccia, the Court remanded Life Insurance Association of Massachusetts v. State Ethics Commission, 431 Mass. 1002 (2000) to the Superior Court for further remand to the Commission. The Supreme Judicial Court directed the Commission to review the record and make "further findings and a determination whether LIAM's expenditures were intended to influence a specific 'official act performed or to be performed' by public officials."³

On June 8, 2001, the Superior Court (Fabricant, J.), following the instructions of the Supreme Judicial Court, remanded the case to the Commission.

The parties, at the request of the Commission, submitted memoranda on November 9, 2001. The Respondent filed a reply memorandum on November 29, 2001 and the Petitioner filed a reply memorandum on December 6, 2001. On April 17, 2002, the full Commission held a hearing and heard the parties' arguments. Deliberations began in executive session on that date.⁴

In rendering this Decision and Order which concludes, as fully discussed below, that LIAM violated G.L. c. 268A, § 3(a) on two occasions, each undersigned member of the Commission has considered the evidence and the legal argument of the parties. This Decision contains a general legal discussion, followed by a discussion of each of the nine gratuities. The discussion of each individual gratuity begins with the two gratuities that we find violate § 3(a), followed, in chronological order, by discussions of the gratuity allegations that we find have not been proven by a preponderance of the evidence.

Decision

A. Legal Discussion

This case requires us to examine and apply the language of G.L. c. 268A, §3(a), which states:

Whoever otherwise than as provided by law for the proper discharge of official duty, directly or indirectly, gives, offers or promises anything of substantial value to any present or former state, county or municipal employee or to any member of the judiciary, or to any person selected to be such an employee or member of the judiciary, for or because of any official act performed or to be performed by such an employee . . .

The Supreme Judicial Court has asked us to focus on whether LIAM's expenditures for meals and a set of golf clubs for various legislators and the Insurance Commissioner "were intended to influence a specific 'official act performed or to be performed.'"⁵ G.L. c. 268A, § 1(h) defines the term "official act" as "any decision or action in a particular matter or in the enactment of legislation."

When construing statutory language, we begin with the proposition that the

Intent of the legislature is to be determined primarily from the words of the statute, given their natural import in common and approved usage, and with reference to conditions existing at the time of enactment. This intent is discerned from the ordinary meaning of the words in a statute considered in the context of the objectives that the law seeks to fulfill.⁶

At the time of the enactment of § 3, the drafters of the Massachusetts conflict of interest law were also studying proposed federal conflict of interest legislation.⁷ The Massachusetts drafters have indicated that they used a report by the Association of the City of New York Special Committee on the Federal Conflict of Interest Laws (New York Special Committee) as a basic text in drafting the conflict of interest law.⁸

The New York Special Committee recognized five policy objectives to be addressed in any conflict of interest legislation: government efficiency; equal treatment of equal claims;⁹ public confidence; preventing the use of public office for private gain; and preserving the integrity of government policy-making institutions.¹⁰ The issue of gifts and gratuities given to public officials raises concerns that public office may be used for private gain; that donors of gifts receive unequal access in the halls of government; and that public confidence is eroded in the decision-making processes.

These concerns are raised whether or not there is an actual *quid pro quo* for a gift. The conflict of interest law is concerned not only with actual conflicts of interest but also with perceptions of conflicts.¹¹ Whether actual or perceived, each situation erodes public confidence in government.¹²

While acknowledging the prophylactic purposes of the conflict of interest law, we also recognize that not all gifts are impermissible under the statute. The Supreme Judicial Court, in Scaccia, following the rationale of the United States Supreme Court in United States v. Sun-Diamond Growers of Cal., 526 U.S. 398 (1999), found that “for the commission to establish a violation of G.L. c. 268A, § 3(a) and (b), there must be proof of linkage to a particular official act, not merely the fact that the official was in a position to take some undefined or generalized action” regarding the giver’s interests. Further, in discussing the intent of the giver, the Supreme Judicial Court indicated that “a gratuity in violation of the statute . . . can either be provided to an official as a reward for past action, to influence an official regarding a present action, or to induce an official to undertake a future action.”¹³

In the Scaccia decision, the Supreme Judicial Court also relied upon an opinion concerning a federal gratuities criminal case from the D.C. Circuit, U.S. v. Schaffer, 183 F.3d, 833 (D.C. Cir. 1999). The Schaffer Court succinctly defined the intent element as follows:

A gratuity can take the form of a reward for past action –i.e. for a performed official act . . . Second, a gratuity can be intended to entice a public official who has already staked out a position favorable to the giver to maintain that position . . . Finally, a gratuity can be given with the intent to induce a public official to propose, take, or shy away from some future official act . . . This third category would additionally encompass gifts given in the hope that, when the particular official actions move to the forefront, the public official will listen hard to, and hopefully be swayed by, the giver’s proposals, suggestions and/or concerns.”¹⁴

The Supreme Judicial Court recognized, and we acknowledge, that direct evidence of an illegal gratuity is not likely to be present in a particular case. The Supreme Judicial Court did not articulate with specificity the sufficiency and qualitative nature of the evidence necessary to prove the requisite nexus between a specific official act and an intent to influence or reward a public official. However, the Court provided some initial guidance, stating:

We recognize that direct evidence regarding either the intent to influence a specific act or that an official was influenced in the undertaking of a specific act is difficult to obtain. In these circumstances, therefore, ‘the trier of fact can do no more than ascribe an intent [to influence or be influenced] on the basis of the circumstances surrounding’ the gift . . . Accordingly, evidence regarding the subject matter of pending legislation and its impact on the giver, the outcome of particular votes, the timing of the gift, or changes in a voting pattern would be some of the appropriate factors in proving a violation.¹⁵

From our research, the Schaffer Court is one of very few in the United States that has been required to review the adequacy of the proof of nexus in a gratuities case, as the Commission is now called upon to do. The Schaffer Court acknowledged that the intent element is subjective and it examined the totality of the circumstances surrounding the gratuities, “focusing upon the more realistic and probative question of whether the acts in question were substantially, or in large part motivated by the requisite intent to influence. . . .”¹⁶

Accordingly, when deciding whether a gratuity has been given “for or because of an official act performed or to be performed” under G.L. c. 268A, § 3, we will weigh the totality of all of the circumstances surrounding the gratuity, drawing reasonable inferences from the circumstances. We will consider whether the gratuity was given substantially, or in large part was motivated by, the requisite intent to influence a present or future official act of the public official or to reward a past action.¹⁷

We consider the Supreme Judicial Court’s factors as suggestions, not as an exclusive list. In addition to the factors given by the Supreme Judicial Court, we would add, among other factors: whether the gift was aberrational conduct for the giver¹⁸; the location of the entertainment; the nature, amount, and quality of the gift; whether the gift was considered a business expense; to whom the gift was targeted; whether there was reciprocity; the existence or absence of any personal friendship; the intensity of the lobbying activities;¹⁹ the sophistication of the parties; and whether the gratuity is part of a repetitive occurrence.

We consider how a public official voted or whether a public official had actual knowledge about the precise identity of a giver to be factors, but such factors are not dispositive of the intent by a donor, such as LIAM, to influence a specific official act. These are merely additional factors to be weighed in the totality of the circumstances. The Supreme Judicial Court has stated that, unlike a bribe, “only a one-way nexus need be established for a gratuity violation.”²⁰ Therefore, the relevant issue here is the intent of LIAM in giving the gratuities, not the intent of the public officials who accepted the gratuities.

Before turning to an analysis of the specific gratuities at issue, it is necessary to understand the context and background of the lobbying process.

B. The Lobbying Process

1. Subsidiary Background Facts

All of the facts stipulated by the parties or found by the Commission in its original December 16, 1997 Decision and Order are incorporated by reference into this Decision and Order. Following a review of the complete administrative record we find the following additional facts by a preponderance of the evidence:

1. One of the benefits LIAM offered to its members was the power to collectively advocate on an issue and present a unified position.
2. The LIAM Executive Committee set the policy for LIAM. William Carroll reported to the Executive Committee. The Executive Committee was composed of executives of LIAM members who were appointed to serve by the members' chief executive officers.
3. LIAM advisory committees were composed of employees of LIAM members. Advisory committees advised William Carroll and the Executive Committee on legislative and regulatory issues.
4. Over 100 individuals from LIAM member companies volunteered to serve on advisory committees.
5. The advisory committees included lawyers, actuaries, insurance underwriters and others with expertise in the particular subject matter. LIAM used this expertise on its advisory committees, and the committees' research to develop advocacy positions.
6. LIAM staff members sent pieces of legislation to the appropriate advisory committee to study. LIAM advisory committees reviewed legislation and regulations according to their assigned subject matter. For example, the Health Insurance Advisory Committee reviewed proposed health insurance legislation.
7. LIAM advisory committees reviewed and researched legislative bills to determine the issues presented by the bill and the bill's impact on the insurance industry. An advisory committee made a recommendation to the Executive Committee. The Executive Committee used the recommendation to take a position whether to favor or disfavor a bill. Generally the Executive Committee adopted the advisory committee's recommendation.

8. The written research and recommendations of the advisory committees were organized into packets and given to LIAM legislative agents or legislative agents of LIAM member companies.

9. The legislative agents met with legislators in the legislators' offices to disseminate the materials. A company expert may accompany a legislative agent on a legislative visit.

10. LIAM also sent educational materials and letters to legislators' State House offices.

11. LIAM legislative agents testified at legislative committee hearings on major bills of importance to LIAM and its members and submitted written materials.

12. LIAM also built coalitions in the community with individuals or groups that shared LIAM's interest on issues.

13. One of LIAM's advisory committees was a Legislative Counsel Committee composed of legislative agents for LIAM and LIAM member companies. In the relevant time frame, members of the Legislative Counsel Committee included: Luke Dillon; Edward Dever; William Sawyer; Alvaro Sousa and John Spillane.

14. The Legislative Counsel Committee met weekly when the Legislature was in session to discuss the Executive Committee's positions on pieces of legislation. The purpose of the meetings was to make sure that the legislative agents understood the issues so they could lobby effectively.

15. At the Legislative Counsel Committee meetings the legislative agents discussed which legislators and staff members to approach on a particular piece of legislation.

16. At the Legislative Counsel Committee the legislative agents tried to coordinate which lobbyist visited which legislator.

17. It was important that a LIAM legislative agent met with the chairmen of a committee and the members of the committee who best understood the issue and could explain the issue to other legislators. The personal relationship and rapport between a legislative agent and legislator was important in selecting which legislator to meet.

18. One of LIAM's lobbying objectives was to provide many materials so that legislators would clearly understand LIAM's positions.²¹

19. LIAM sought to be identified, by its lobbying efforts in the Legislature, as "the primary spokesman for the life and health insurance industry in the commonwealth."²²

20. In their lobbying activities, LIAM legislative agents met with legislators and committee chairmen outside of public hearings.

21. LIAM expected its lobbyists to be on speaking terms with all members of the Legislature.

22. Often, not only William Carroll, but also several other representatives of the insurance industry would meet with legislative committee chairmen. It was important to LIAM to maintain good relationships with the Insurance Commissioner, the Division of Insurance, the Legislature, and the legislative Joint Committee on Insurance.

23. William Carroll had instructed LIAM staff and Luke Dillon not to discuss legislation at dinners with legislators.

24. During the relevant time frame, Representative Woodward never bought dinner for William Carroll.

25. During the relevant time frame no state representative paid for William Carroll's lunch or dinner.

26. William Carroll's duties at LIAM included: directing the staff; performing general administrative duties; coordinating LIAM advisory committees; and serving as media spokesman. He was responsible for budget expenditures. His duties included coordinating the lobbying effort by the various lobbyists who represent LIAM and LIAM members. He was a registered legislative agent.

27. William Carroll was involved with lobbying activities approximately 10% of his work time. He was more likely to become involved as a lobbyist if the issue was of particular importance to LIAM. He decided on which bills he would offer testimony.

28. If an issue was of critical importance to LIAM, William Carroll would seek a meeting or be asked by other legislative agents to meet with a legislator, legislative staff, or employees of the Division of Insurance to explain LIAM's position.

29. During the relevant time period, William Carroll had substantial dealings with state regulators.

30. William Carroll has lobbied, among others, Representatives Francis Woodward, Francis Mara, Frank A. Emilio, Marc Pacheco, Thomas P. Walsh, Michael P. Walsh, John F. Cox, and Angelo Scaccia.

31. Luke Dillon was the chief legislative agent under contract for LIAM. He took the positions approved by the Executive Committee and the materials prepared by the advisory committees to the legislators and advocated LIAM's views. Occasionally William Carroll would accompany Mr. Dillon on legislative visits.

32. Luke Dillon's duties for LIAM included: representing LIAM on legislative matters; performing legislative agent activities; advising William Carroll; and developing relationships with Massachusetts state employees, including state legislators.

33. Luke Dillon worked hard to establish good professional relationships with the Legislature and the executive branch so that legislators and members of the executive branch would return his telephone calls and meet with him on an informal basis.

34. In his duties Luke Dillon testified at legislative hearings and held informal meetings with members of the Legislature to discuss pending bills.

35. Luke Dillon lobbied, among others, Representatives Francis Woodward, Francis Mara, Frank Emilio, Thomas Walsh, Michael Walsh, John Cox, Kevin Poirier, and Kevin Honan.

36. At LIAM, Francis O'Brien's duties included monitoring legislation and regulations. He worked on the National Association of Insurance Commissioners (NAIC) accreditation issue, taxation and tax reform issues. He was a registered legislative agent.

37. The Joint Committee on Insurance (Insurance Committee) was the legislative committee with the largest number of bills of interest to LIAM.

38. The co-chairmen of the Insurance Committee had significant power over Insurance Committee activities.

39. Generally the entire Insurance Committee had a role in determining whether a proposed bill should or should not pass.

40. Between 1989-1993 Health Care Committee bills of interest to LIAM were pending.

41. The House and Senate Committee on Bills in Third Reading examined and corrected bills, reviewed the bills for accuracy in text and consistency with other state laws, reported any legal changes made to the bill as amendments, and could consolidate bills.

42. Any Legislative committee to which a bill was assigned could vote to give the bill a favorable or unfavorable recommendation to the Legislature, or to place the bill on file, or to send the bill to another committee.

43. Each bill initiated in the House of Representatives and reported out of committee passed through three readings in the House. If the bill affected state finances it was referred to the House Ways and Means Committee after the first reading.

2. Discussion

The overall context of sophisticated lobbying practice is the lens through which the specific acts, described below, must be viewed. Certainly, LIAM has federal and state constitutional rights, as with any individual or group, to petition government officials and advocate its position on a piece of legislation. LIAM's meetings with public officials in their offices, testimony before legislative committees, and submission of materials through standard committee channels are all appropriate means to use to advocate. Such advocacy is a crucial part of the democratic governmental process. But, when such lobbying becomes combined with personal, expensive, or lavish entertainment, professional boundary lines become blurred.

This is particularly the case where the entertainment is repeated, planned, and targeted to certain public officials who likely will be the most influential in matters affecting LIAM's interests. There were no personal friendships and no reciprocity between William Carroll and any of the legislators. William Carroll considered entertainment important to building relationships with public officials. LIAM's business was to educate and influence public officials about the interests of the insurance industry.

Our careful review of the record leads us to believe that, for the most part, these expenditures were not occasional, spur-of-the-moment dinners. Each year, each meal to specific individuals built on prior meals and entertainment. LIAM hoped that the cumulative effect of such gratuities would create a sense of entitlement and indebtedness by the public officials. For example, Mr. Carroll testified that he could not

recall Representative Woodward, on any occasion in their relationship, ever buying Mr. Carroll a meal. Carroll could not recall any occasion, between 1990 and 1993, when any legislator ever bought him lunch or dinner. Carroll and Dillon each testified that it was important to them to establish personal relationships with legislators so that legislators would be receptive to listening to LIAM's positions. Carroll also testified that the personal relationship and rapport between a legislative agent and a legislator was important in identifying which legislative agent to send to speak with a particular legislator. Except for the incidences discussed below, our review of the record leads us to conclude that LIAM's goal in engaging in a repeated pattern of entertainment was to foster access so that, when the appropriate time came and LIAM needed a legislator to focus on a bill, the legislator would be receptive to LIAM's interests and listen hard to LIAM's arguments.

We have been directed by the Supreme Judicial Court to determine whether these entertainment expenditures were intended to influence or reward a specific official act. We acknowledge that not all attempts to use entertainment to obtain access will violate G.L. c. 268A, § 3. It is our view that repeated entertainment targeted to particular influential public officials to foster access undermines public confidence in governmental decision-making.²³

C. Specific Gratuities

We turn to applying the legal principles articulated above to the specific gratuities given in this case.

May 13, 1992 Four Seasons Dinner with Insurance Commissioner Doughty

1. Additional Findings

We make the following additional findings based on the preponderance of the evidence:

44. The Commissioner of Insurance, as head of the Division of Insurance (Insurance Division), was responsible for the regulation of insurance in the Commonwealth. The Insurance Division licensed insurance companies, approved and licensed the products of companies, approved policy forms relative to insurance projects, licensed insurance agents, examined companies to determine solvency, reviewed mergers and demutualization of companies.

45. Solvency was considered by LIAM to be the most important issue in 1992. LIAM considered the passage of new laws and regulations, required for NAIC accreditation of the Commonwealth's Division of Insurance, as a big issue in 1992.

46. Insurance company solvency was important because insurance companies self-insured against insolvency through a guaranteed fund. The Commonwealth determined an assessment each insurance company in the state paid into the fund. The guaranteed funds paid the outstanding claims of an insolvent insurance company.

47. Insurance companies who were solvent did not want other companies to become insolvent because the solvent companies would have to subsidize claims covered by the insolvent company.

48. In the early 1990's, members of Congress criticized the strength of insurance regulations in the various states. In response to the criticism, NAIC developed a state accreditation program that included basic statutes each state was required to have and criteria regarding organization, financing and administration of departments of insurance.

49. NAIC would send an investigative team to a state to review the state's insurance laws and insurance department and to make a recommendation whether the state should be accredited.

50. NAIC accreditation of a state insurance body meant that the organization was qualified, according to national standards, to adequately regulate the insurance industry in its state. Most insurance companies supported this accreditation process because it led to consistent regulations from state to state.

51. The insurance companies were willing to accept the increased regulatory scrutiny caused by NAIC accreditation because it improved insurer solvency.

52. NAIC established January 1, 1994 as the deadline for insurance departments to meet the standards in its accreditation program.

53. Beginning January 1, 1994, insurance companies domiciled in a non-accredited state risked losing their ability to conduct business in accredited states until their state's insurance agency had been accredited.

54. One method in which an insurance company domiciled in a non-accredited state could conduct business in an accredited state would be to voluntarily subject itself to examination and approval by regulators in an accredited state.

55. Frank O'Brien advised LIAM's Executive Committee that, "examinations are costly in terms of money, time and trouble. Being in a non-accredited state means that a company will be subjected to more and perhaps more stringent examinations. A company will also possibly be placed in the unenviable position of

having to conform its practices to the laws of the accredited examining state in a manner that results in conflicts with the domiciliary regulator.”²⁴

56. A company domiciled in a non-accredited state could be less competitive in the market place against insurance companies domiciled in accredited states.

57. LIAM created a NAIC Certification Committee Negotiation Task Force that met with representatives of the Commonwealth’s Insurance Division in late January 1992. At the first meeting LIAM was designated as the Division’s prime contact point on accreditation matters. The LIAM/Division working group planned to meet weekly, with a goal of filing legislation in March.

58. On April 29, 1992 William Carroll spoke with Cindy Martin, a Division of Insurance employee on the NAIC/Division working group, to schedule a meeting with Commissioner Doughty about the management issues, such as restructuring, funding and staffing of the Division. Ms. Martin recommended a meeting in the middle of May when it was anticipated that the Division would finalize its estimates for funding and staffing needs.

59. On April 29, 1992, Ms. Martin advised William Carroll that the Division was checking NAIC data on staffing averages throughout the United States and that the Division, in comparison, “didn’t look very good.” She also informed Mr. Carroll that the Division had not requested additional staffing in the FY 93 budget.²⁵

60. William Carroll wanted Ms. Martin and Commissioner Doughty “to open up with us on some of these internal budgeting and staffing matters so that we can be effective advocates and advisors” at the Legislature.²⁶

61. On April 29, 1992, Ms. Martin advised William Carroll that NAIC focused on whether the Division, quantitatively and qualitatively was “in a position to get the job done.” She admitted that the Division, at that time, would not meet the qualitative standards.²⁷

62. On April 29, 1992, Carroll was able to schedule a meeting with Commissioner Doughty at her office for May 19, 1992.

63. After the April 29, 1992 telephone conversation with Ms. Martin, William Carroll was prepared to recommend to the Executive Committee that the Committee establish a deadline by which LIAM would be assured about progress on restructuring the Division. If the deadline passed and there was a lack of progress LIAM needed to develop a process “for going upstairs,” to Commissioner Doughty’s supervisors.

64. In LIAM’s opinion, Commissioner Doughty was not paying adequate attention to the managerial aspects of the Division of Insurance. One of the more important criteria for NAIC accreditation was the Division’s management.

65. On May 13, 1992, William Carroll and Luke Dillon, the contract lobbyist for LIAM, took Commissioner Doughty out to dinner at the Four Seasons Hotel in Boston.

66. At the time of the May 13, 1992 dinner, the Division of Insurance was preparing for the examination by the NAIC.

67. The purpose of the dinner with Commissioner Doughty was to discuss the accreditation process with her. LIAM, through Carroll and Dillon, wanted to stress the importance of having a sufficiently staffed and trained Division and to reiterate the insurance industry's offer to provide continued technical assistance, particularly in the computer technology area. LIAM intended to give Commissioner Doughty some constructive criticism about the management of the Division. LIAM did discuss the NAIC accreditation issues at the dinner. LIAM also discussed NAIC proposed legislation at the dinner.

68. LIAM considered it important to convey its concerns about the Division's perceived weaknesses in the NAIC accreditation process. Commissioner Doughty had not been receptive to LIAM's proposals in meetings at her office prior to the dinner. William Carroll believed that Commissioner Doughty would be more receptive to LIAM's proposals in the informal setting of a restaurant.

69. LIAM believed that Commissioner Doughty was not providing "hands-on" management. According to William Carroll, "the purpose of this dinner was for myself and Luke Dillon to urge her to pay attention to the in-house administrative organizational management aspects."

70. An important issue for LIAM was to have Commissioner Doughty focus on what the Division needed in order to become accredited and to consider using the technical expertise of the insurance industry.

71. At the time of the Four Seasons dinner, LIAM thought that the Division was far from meeting the NAIC criteria in such areas as proper staffing, proper funding, proper equipment, proper organization, and proper procedures.

72. William Carroll believed that if the Division did not pass NAIC accreditation because of poor management, the domestic insurance companies in Massachusetts would have disadvantages working in other states and some insurance companies could go out of business.

73. On May 14, 1992, the day after the dinner, William Carroll confirmed a May 26, 1992 meeting with Commissioner Doughty, other members of the Division, Jim Gallaher (Chairman of LIAM's Executive Committee), Bill O'Connell (Chairman of the LIAM NAIC Certification Committee Task Force), and himself in order to discuss the NAIC accreditation process, staffing, funding and organization of the Division.

74. On June 4, 1992, Mr. O'Connell reported to the Executive Committee that the LIAM Task Force and the Division had reached agreement on all legislative issues.

75. As of August 31, 1992, LIAM and the Division of Insurance had been meeting on a regular basis to draft and review the various bills needed to be filed for NAIC accreditation. Frank O'Brien was in almost daily contact with the Division.

76. On July 10, 1992, Representative Francis Mara prepared an amendment to the deficiency budget establishing a Division of Insurance Trust Fund that would be funded by revenues collected by the Division. The amendment was adopted. Representative Mara also prepared an amendment allowing the Insurance Commissioner to make a special Division of Insurance maintenance assessment totaling \$1,014,000, payable by the life insurance companies licensed to do business in the Commonwealth. The amendment was adopted. LIAM lobbied the Legislature in support of the Division funding.

77. As of September 21, 1992, LIAM was continuing its strong support for the Division of Insurance's efforts to become accredited.

78. As of September 23, 1992, the NAIC legislative package was being reviewed by the Governor's office prior to filing with the Legislature.

79. In an October 19, 1992 memorandum, Francis O'Brien reported that, because the Division of Insurance was understaffed, LIAM might have an opportunity to become drafters of the regulations that would be needed to implement the NAIC legislative changes.

80. Francis O'Brien reported that, by approaching the Division of Insurance in October 1992 about drafting regulations, LIAM could "take advantage" of relationships it had fostered during NAIC legislative discussion meetings.

81. The NAIC legislative package was filed on November 4, 1992 for the 1993 legislative session.

82. The Division passed the accreditation process and the insurance industry paid a special assessment to further fund the Division's activities.

2. Discussion

On May 13, 1992, William Carroll and Luke Dillon, the chief LIAM legislative agent, took Insurance Commissioner Doughty to dinner at the Four Seasons Hotel. No one, other than these three individuals, attended the dinner. Carroll paid for the dinner, which was over \$100 per person, and was reimbursed by LIAM as a business expense. This was a business dinner. Neither Carroll nor Dillon shared a personal friendship with the Insurance Commissioner. As discussed below, we conclude that the payment of this dinner was a violation of G.L. c. 268A, § 3(a).

This meal was of substantial value and was given to a public employee. The evidence supports inferences that the Insurance Commissioner was presently engaged and would, in the near future, be engaged in numerous specific official actions concerning the Insurance Division's application to NAIC and in NAIC's determination about the Division accreditation. This application and the certification decision were particular matters.²⁸ For example, the Insurance Commissioner needed to make decisions about the Division's funding level, the Division's staffing and reorganization to comply with NAIC criteria, and the use of technology offered by the insurance industry. All of these official actions were discussed at the May 13 dinner.²⁹

Additionally, there is ample evidence that LIAM, through Carroll and Dillon, intended, by hosting the dinner and at the dinner, to influence the Insurance Commissioner's decisions and actions regarding the NAIC application. First, in 1992, the most important issues for LIAM were NAIC accreditation of the Commonwealth's Division of Insurance and insurer solvency.

It was very important to LIAM that its members be domiciled in a NAIC accredited state. Insurance companies domiciled in a non-accredited state risked losing their ability to conduct business in accredited states, could be subject in accredited states to more stringent examinations, and could be harmed by competition in the marketplace from insurance companies domiciled in accredited states.

LIAM was aware that this accreditation process was time-limited. NAIC had established January 1, 1994 as the deadline for insurance commissions to become accredited. The accreditation process required additional statutes to be enacted and regulations to be promulgated in Massachusetts, as well as an upgrade of the Division's organization, finances, and management. At the time of the May dinner, the Insurance Division was preparing legislation to implement the accreditation process and was preparing for its own examination by NAIC examiners.

In late January 1992, LIAM had established a separate Task Force, called the NAIC Certification Committee Negotiation Task Force, specifically to deal with the NAIC accreditation issues. This Task Force became the Division of Insurance's primary industry contact and met regularly with Division employees on the accreditation issue. Further, William Carroll testified that he personally became involved in lobbying if the issue was of major significance to LIAM and its members.

William Carroll began meeting with Insurance Commissioner Doughty, in her office, in January 1992. By April 29, 1992, according to LIAM internal memoranda, William Carroll and LIAM were worried that the Division was not doing enough to prepare for accreditation and was in danger of not passing the examination. Carroll was concerned about the Division's lack of progress and Commissioner Doughty's lack of leadership on the issues and was proposing to the LIAM Executive Committee, if sufficient progress wasn't made, that LIAM "go upstairs" to Commissioner Doughty's superiors. In LIAM's opinion, Commissioner Doughty was not taking an assertive role in

the accreditation process. She was not reaching out to the insurance industry for help, particularly with technology needs. LIAM had been trying to get more information about the Division's budgeting and staffing issues, but the Commissioner was not forthcoming in these office meetings.

On April 29, 1992, William Carroll spoke with a Division employee on the Task Force to schedule a meeting with Commissioner Doughty about management issues, such as re-structuring, funding and staffing of the Division. She suggested a meeting with the Commissioner on May 19, 1992.

Significantly, during that April 29 conversation, Mr. Carroll learned from the Division employee that, when compared to other states, the Division staffing averages "did not look good." She also told Mr. Carroll that the Division had not requested additional staffing in the FY93 budget request. She advised Carroll that NAIC focuses on whether an insurance body, quantitatively and qualitatively is "in a position to get the job done" and she acknowledged that the Division, at that time, would not meet the NAIC qualitative standards.

Thus, after the April 29 telephone call with the Division employee and prior to the May 13, 1992 dinner, LIAM knew that some of its concerns about the Division's deficiencies were valid. It also knew that the Insurance Commissioner was not responding favorably to its advocacy efforts at meetings at her office. At the time of the Four Seasons dinner, LIAM thought that the Division was far from meeting the NAIC criteria in such areas as proper staffing, proper funding, proper equipment, proper organization, and proper procedures.

William Carroll and Luke Dillon took Commissioner Doughty to the Four Seasons Hotel, generally recognized as one of the luxury restaurants in Boston, to discuss the same management issues that were planned to be discussed in the Insurance Commissioner's office. This was not a casual or informal working dinner. The meal was over \$100 per person. Carroll acknowledged that he thought LIAM's message would be better received in the ambiance of the Four Seasons restaurant.³⁰

The parties discussed the accreditation process at dinner.³¹ LIAM criticized Commissioner Doughty's management of the Division and expressed LIAM's concerns about the Division's weaknesses in the accreditation process. LIAM wanted Commissioner Doughty to focus on what the Division needed to become accredited and to consider using the technical expertise of the insurance industry to help the Division. According to William Carroll, "the purpose of this dinner was for myself and Luke Dillon to urge her to pay attention to the in-house administrative organizational management aspects." LIAM stressed the importance of having a Division that was properly staffed and trained. LIAM conveyed its concerns about inadequate staffing, funding, and management issues existing at the Division. LIAM wanted the Commissioner to quickly take concrete actions to improve her staffing, training, and funding.

Finally, we find no other credible explanation for why William Carroll and Luke Dillon would have taken Commissioner Doughty to, and paid for a dinner, at the Four Seasons restaurant, other than with an intent to induce her to propose and take specific actions to seek further staffing and funding, to reorganize her division, and to better utilize the insurance industry. This dinner was outside the normal business channels that had been established between the parties. There was a future business meeting already scheduled in her office to discuss these issues. Prior to this dinner Carroll had been meeting with the Insurance Commissioner at her office, but felt he had been unsuccessful in having his message heard. Additionally, as he suggested, William Carroll could have taken the issues to the Commissioner's superiors at that time. At this dinner, William Carroll did not follow his own LIAM policy not to discuss business at dinners where he paid for the public official's meal. The weight of the evidence supports a conclusion that LIAM took the Insurance Commissioner to the Four Seasons "in the hope that, when the particular actions move to the forefront, the [Insurance Commissioner] will listen hard to, and hopefully be swayed by, [LIAM's] proposals, suggestions and/or concerns."³²

Further, the evidence reflects the fact that Commissioner Doughty did listen to Carroll and Dillon and that the Insurance Division's doors opened to LIAM. The day after the dinner, William Carroll wrote a letter to Commissioner Doughty, confirming a scheduled meeting on May 26 with Carroll, the Chairman of LIAM's Executive Committee, the Chairman of LIAM's NAIC Certification Task Force, and other members of the Division to discuss the NAIC accreditation process, staffing, funding and the organization of the Division. Within three weeks LIAM was reporting that all legislative issues had been resolved between LIAM and the Division. During the summer representatives of LIAM were meeting on almost a daily basis with Division representatives. Also, during the summer, the Division sought additional funding for staffing from the Legislature. The Legislature, in July 1992, enacted a special assessment on insurance companies to help fund the Division. By October 1992, LIAM was hopeful of building on the personal relationships LIAM representatives had cultivated during the accreditation process earlier in the year so that it could assist in writing the regulations required for accreditation.

In conclusion, we find, by a preponderance of the evidence, that LIAM gave the Insurance Commissioner a meal of substantial value for or because of her official actions performed or to be performed in violation of G.L. c. 268A, § 3(a).³³

March 13, 1993 Amelia Island Ritz Carlton Dinner

1. Additional Findings

We make the following additional findings based on the preponderance of the evidence:

83. NCOIL (National Conference of Insurance Legislators) was a national organization of legislators who were interested in insurance issues.

84. LIAM was not a member of NCOIL but was a member of the Industry Advisory Committee. The Industry Advisory Committee was composed, not only of insurance companies, but also of accounting firms and attorneys. The Industry Advisory Committee financially supported NCOIL's educational initiatives.

85. Legislative members of NCOIL met three to four times per year for educational seminars and conferences.

86. William Carroll attended some of NCOIL's conferences between 1989-1993 to learn what issues legislators were addressing, as these issues would likely become future legislation.

87. One factor in LIAM's consideration whether to send a LIAM representative to an NCOIL conference was whether Massachusetts legislators would also attend the conference.

88. In 1993, certain laws had to be passed in order for the Massachusetts Division of Insurance to be accredited by NAIC.

89. H. 53 was the bill filed by the Secretary of Consumer Affairs, on behalf of the Governor, that contained the changes needed to the Commonwealth's insurance laws so that the Division of Insurance could receive NAIC accreditation. LIAM made many recommendations to the Division of Insurance as the Division drafted H. 53.

90. H. 53 would provide the Division of Insurance with the powers it needed to monitor the solvency of insurance companies and to intervene if necessary.

91. H. 53 was required to be enacted prior to a NAIC inspection of the Division.

92. As of November 4, 1992, LIAM wanted the NAIC legislation passed by June 1993.

93. In 1993, the largest LIAM member companies were John Hancock Mutual Life Insurance Company, New England Life Insurance Company, Massachusetts Mutual Life Insurance Company and State Mutual Life Insurance Company.

94. As of January 7, 1993, LIAM's Executive Committee agreed that H. 53 should be heard by the Legislature as soon as possible in the new legislative session.

95. Donald Flanagan was a legislative agent who represented the Health Insurance Association of America and the Massachusetts Association of Life Underwriters. The Health Insurance Association of America was composed of health insurance companies. The Massachusetts Association of Life Underwriters was composed of Massachusetts life insurance agents. Occasionally, Donald Flanagan

and William Carroll would coordinate lobbying activities and share information regarding mutual interests of their respective clients.

96. As of January 1993, Donald Flanagan, on behalf of the Massachusetts Association of Life Underwriters, advised William Carroll that his client wanted to become actively involved in the NAIC accreditation issues and wanted to work with LIAM to promote the issue.

97. In January 1993, the Division of Insurance requested a meeting with LIAM to develop a coordinated strategy to win passage of H. 53.

98. Between January 1993 and February 4, 1993 Luke Dillon met with staff in the House Committee on Ways and Means concerning the assessment on life insurance companies and the increase in property and casualty agent's license fees that was passed in 1992. LIAM wanted this Division revenue approach reexamined and changed.

99. Between January 1993 and February 4, 1993, Luke Dillon discussed H. 53 hearing dates with members of the Joint Committee on Insurance.

100. As of February 8, 1993, LIAM's legislative goal was to see H. 53 enacted into law by June 1, 1993. LIAM's target dates in this process included hearings before the Joint Committee on Insurance by March 1, 1993. LIAM expected the Administration, the Insurance Committee, LIAM, the property and casualty insurance industry and agents, and Donald Flanagan's client, Massachusetts Association of Life Underwriters, to be involved in meeting this targeted hearing date.

101. March 30, 1993 was the LIAM target date for the Joint Committee on Insurance to favorably report H. 53 out of Committee. The target date for passage by the House Committee on Ways and Means was April 15, 1993. As of February 8, 1993, LIAM's target date, for House passage of H. 53 was May 1, 1993 and passage by the Senate Committee on Ways and Means by May 20, 1993.

102. LIAM proposed that H. 53 would be passed by the Senate and given final enactment by the House and the Senate on May 30, 1993. June 1, 1993 was the target date for the Governor's signature.

103. On February 12, 1993, William Carroll, Frank O'Brien, Luke Dillon, William Sawyer and others met with Commissioner Doughty and members of her staff about H. 53.

104. At the February 12, 1993 meeting, Commissioner Doughty informed the insurance industry representatives that passage of H. 53 needed to be perceived by the Legislature not only as an Administration initiative but also as an industry initiative. The Division of Insurance believed that H. 53 needed to be passed by July 1993 because the latest date the Division could be reviewed by NAIC was November 1993.

105. The Division of Insurance representatives urged the insurance industry representatives to encourage their chief executive officers to become involved in the lobbying effort and to meet with the Legislative leadership. William Carroll agreed to involve the chief executive officers in the lobbying efforts. Generally, the chief executive officers only became involved in lobbying activities in rare circumstances.

106. Commissioner Doughty advised the insurance industry representatives that a legislative hearing needed to be held in March 1993.

107. Commissioner Doughty planned to meet with the Joint Committee on Insurance beginning with House Chairman Francis Mara, in the week following February 12, 1993.

108. At the February 12, 1993 meeting, Commissioner Doughty advised the insurance industry representatives that NAIC was unwilling to extend the January 1, 1994 deadline for accreditation. She also informed the industry representatives that, if Massachusetts was not accredited, Massachusetts examinations would not be accepted out of state. She knew one state had pending legislation that would prohibit companies in unaccredited states from doing business in that state.

109. At the February 12, 1993 meeting, William Carroll informed the Division of Insurance that LIAM had visited key legislators about H. 53 because the industry needed this legislation passed as soon as possible. As of February 12, 1993 William Carroll had not received any legislative commitment about an early hearing date.

110. As of February 12, 1993, LIAM knew that the Joint Commission on Insurance had scheduled a hearing for March 22, 1993, but did not know if the Committee would have H. 53 on its agenda. One of the advantages of a hearing was to identify potential opposition to a bill.

111. At the February 12, 1993 meeting, William Sawyer identified Representative John Cox as one of the key legislators in the passage of H. 53.

112. At the February 12, 1993 meeting, William Sawyer opined that passage by July 1, 1993 was very optimistic given "the institutional pace of the legislature. This is particularly the case since this bill has no legs, is 156 pages long and is a bill of first impression. They'll gag on this."³⁴

113. At the February 12, 1993 meeting, William Carroll and Luke Dillon reported that each had met with Representative Thomas Walsh.

114. At the February 12, 1993 meeting, Commissioner Doughty agreed to prepare a status report and schedule regarding tasks to be done, for distribution to LIAM, the chief executive officers, and legislators.

115. As of February 24, 1993, LIAM and Luke Dillon knew that the Joint Committee on Insurance had placed H. 53 on its agenda for the March 22, 1993 hearing. Luke Dillon had spoken with the Insurance Committee Chairman.

116. William Carroll was registered for and attended the NCOIL Amelia Island conference in March 1993.

117. William Carroll made the Ritz Carlton dinner reservation at the suggestion of William Sawyer, John Hancock's legislative agent, who was also involved with the lobbying strategy for the NAIC certification issues.

118. On March 12, 1993, William Carroll met with the maitre d' at the Amelia Island Ritz Carlton to plan a dinner. He made a reservation for March 13, 1993. He did not have a definite count of the number of dinner attendees.

119. Some of the menu items were very expensive so the maitre d' suggested Mr. Carroll create a limited menu for the dinner. Mr. Carroll selected a few items from the menu and the restaurant printed a limited menu for Mr. Carroll's guests.

120. William Carroll chose approximately five entree items from the Ritz Carlton menu to offer to his guests. He also chose wines to be placed on each table.

121. At the time that William Carroll arrived at the restaurant for dinner on March 13, 1993, the Ritz Carlton had arranged two tables, each sitting 10-12 individuals in a corner of the dining room.

122. Those present at the dinner with Carroll included Dillon, William Sawyer and his wife, registered legislative agent Arthur Lewis and his wife, Massachusetts Medical Society registered insurance industry legislative agent Andrew Hunt, Blue Cross Blue Shield registered legislative agent Marcy McManus, Health Insurance Association of America and Massachusetts Association of Life Underwriters registered legislative agent Donald Flanagan, Francis Carroll of the Small Business Service Bureau, Inc., Representative Francis Mara and his wife, Representative Thomas Walsh and his wife, Representative William Cass, Representative Michael Walsh and his wife, Representative Kevin Honan and his guest, Representative Angelo Scaccia and his son, representative John Cox and his wife, and Representative Poirier.

123. William Carroll sat next to Representative Francis Mara and his wife. Also at the table were Luke Dillon and Donald Flanagan.

124. Some of the guests at the Ritz Carlton dinner ordered additional wine and alcoholic beverages, including six glasses of Remy Martin cognac at a cost of \$85 per glass. None of the guests paid for these extra beverages.

125. Only people from Massachusetts attended the Ritz Carlton dinner. William Carroll knew all of the legislators who attended.

126. At the time of the March 1993 Ritz Carlton dinner, William Carroll was not personal friends with any of the legislators who attended the dinner.

127. In 1993, Representative Mara was the House Chairman and Representative Thomas Walsh was the House Vice Chairman of the Joint Committee on Insurance.

128. Prior to March 1993, William Carroll had testified before Representative Francis Mara and had met him at his state house office to argue LIAM's positions on issues.

129. Representative Thomas Walsh was serving as the Chairman of a sub-committee of the Joint Insurance Committee. The sub-committee was studying insurer solvency, including the NAIC certification process. In approximately October 1991, Jay Curley of the Joint Committee on Insurance approached LIAM on behalf of Representative Thomas Walsh to provide Representative Walsh with a "non-controversial solvency measure" for Representative Walsh to late-file.

130. William Carroll originally met Representative Angelo Scaccia when he became House Chairman of the Joint Committee on Taxation.

131. Representative John Cox, who attended the March 1993 dinner with his wife, was, at the time of the dinner, House Chairman of the Committee on Bills in Third Reading. This Committee was the last committee to examine a bill before it was presented to the full House of Representatives for a vote.

132. In 1993 Representative Cass was House Vice Chairman of the Joint Committee on Health Care and had been on the Insurance Committee.

133. In 1993, Representative Poirier was a member of the House Committee on Ways and Means.

134. Donald Flanagan, legislative agent for the Massachusetts Association of Life Underwriters, attended the March 13 dinner. Mr. Flanagan was not personal friends with William Carroll.

135. Marcy McManus, the Blue Cross Blue Shield legislative agent, attended the March 13 dinner. At the time of the dinner, William Carroll and Marcy McManus were not personal friends. Prior to the dinner, Ms. McManus volunteered to contribute part of the payment for the dinner. However, she never contributed her portion.

136. Francis Carroll attended the March 13 dinner. He was a business acquaintance, but not a friend of William Carroll. Prior to the dinner, Francis Carroll volunteered to contribute part of the payment for the dinner. He subsequently sent William Carroll a contribution.

137. Prior to the dinner, Arthur Lewis, another legislative agent, volunteered to contribute part of the payment for the dinner. He subsequently sent William Carroll a contribution.

138. Francis Carroll ran and managed a service bureau for small businesses. Health insurance issues were major issues for small businesses.

139. None of the state representatives who attended the Ritz Carlton dinner made an offer to Mr. Carroll to pay for their meal or their guest's meal.

140. The Joint Committee on Insurance held a hearing on H. 53 on March 22, 1993. There was no testimony in opposition to the bill. William Carroll and Charles Soule, Chairman of LIAM's board of directors, as well as several insurance company chief executive officers, testified in favor of H. 53.

141. William Carroll reported on April 8, 1993 that LIAM would attempt to seek technical changes in H. 53 when the bill reached the Committee on Bills in Third Meeting.

142. On May 19, 1993, Francis O'Brien advised William Carroll that H. 53 needed to be enacted by Labor Day in order for the Division of Insurance to promulgate its regulations prior to its November 1993 NAIC review.

143. On June 16, 1993 the Joint Committee on Insurance reported an amended H. 53 out of committee with a favorable recommendation. H. 53 became H. 5220. The amended bill contained changes recommended by LIAM.

144. Following the Committee report, LIAM intended to continue to use "special efforts" in the House of Representatives to continue swift passage of the bill.³⁵ LIAM's primary mission was to gain passage of H. 5220.

145. H. 5220 was reported out of the House Committee on Ways and Means with a favorable recommendation on September 20, 1993.

146. H. 5220 was reported out of the Senate Committee on Ways and Means with a favorable recommendation on October 4, 1993.

147. In 1993, only domestic insurance companies paid a 14% net investment income tax on investment income. This tax had an effect on the ability of domestic insurance companies to compete in the insurance market place.

148. On March 24, 1993, the Joint Committee on Taxation held a hearing concerning repeal of the net investment income tax.

149. William Carroll testified before Representative Angelo Scaccia, regarding the repeal of the net investment income tax. Representative Scaccia was not receptive to LIAM's position. In 1993 and in prior years, the net investment income tax bill was not reported out of committee.

150. Numerous bills that LIAM was following and that were sponsored by attendees of the Ritz Carlton dinner were the subject of hearings within four weeks of the dinner. H. 3772, sponsored by Representative Mara, concerned the

regulation of the purchase of long-term care insurance and was the subject of a hearing by the Joint Committee on Insurance on April 7, 1993. Another bill sponsored by Mara, H. 3763, concerned access to affordable private health insurance and was the subject of a hearing by the Insurance Committee on April 5, 1993. The Insurance Committee held a hearing on April 2, 1993 on H. 3773, a bill regulating individual health insurance and inequitable health insurance market practice. Also on April 7, 1993 the Insurance Committee considered H. 1317, sponsored by Representative Cox, that would prohibit an Insurance Commissioner from working in the insurance industry for one year after leaving office.

151. LIAM submitted written opposition to H. 3773 and H. 3763.

2. Discussion

On March 13, 1993, William Carroll hosted a dinner at the Grill Restaurant at the Amelia Island Ritz Carlton Hotel. He paid for the dinner with his LIAM credit card, although he subsequently received partial reimbursement from certain other Massachusetts legislative agents. The total cost of the dinner for the approximately 24 attendees was \$3089.16, or approximately \$129 per person. Fourteen of the attendees included Massachusetts legislators with some spouses or other family members, and 10 attendees were legislative agents and some of their spouses. Therefore, as we found in the original Decision and Order, William Carroll, by paying for Massachusetts legislators' and their spouses' dinners, gave items of substantial value to public officials. As discussed below, we also find that LIAM provided these meals with an intent to influence the legislators' specific official acts.

For LIAM, the most important piece of legislation before the Legislature in 1993 was H. 53, regarding insurer solvency and NAIC certification of the Division of Insurance. Time was of the essence in passing this piece of legislation. If it were not passed in a rapid time frame, there would not be time for the Division of Insurance to become accredited before January 1, 1994. LIAM had set a goal of passage by June 1, 1993. The LIAM Executive Committee wanted the bill heard by legislative committees as soon as possible in 1993. There was a risk of serious economic consequences to LIAM member companies, such as an inability to sell insurance in accredited states, if the Division was not accredited.

As of the March 13, 1993 dinner, LIAM knew that the Insurance Committee would hold a hearing on H. 53 on March 22, nine days after the Ritz Carlton dinner. In February, LIAM had established an internal target date that the bill would be reported out of Committee with a favorable recommendation by March 30. In January and February 1993, LIAM had established a specific agenda, with target dates for passage of H. 53. LIAM knew that its timetable was ambitious and that it would be unusual, given the complexity of the bill, for the Legislature to act in an expedited fashion. As William Sawyer frankly said, passage by July was very optimistic given "the institutional pace of the legislature. This is particularly the case since this bill has no legs, is 156 pages long and is a bill of first impression. They'll gag on it." LIAM also knew, from a meeting with

Commissioner Doughty that it was important for passage of the bill that the Legislature perceive not only that this was an Administration bill, but also that the insurance industry strongly supported it. Commissioner Doughty wanted the insurance industry, including the chief executive officers, to take a visible role in promoting the legislation.

As of March 13, 1993, the official acts LIAM wanted members of the House of Representatives to take were not only to hold a hearing and give the bill a favorable report, but also, just as important, to prioritize and expedite movement of H. 53 through the various House committees.³⁶

For the following reasons, we conclude that William Carroll, as LIAM's Executive Director, gave the Ritz Carlton dinner, with an intent to influence the legislators who attended to act favorably on H. 53 on an expedited basis. First, at the time of the dinner, William Carroll knew that he would be appearing before the legislators in nine days. According to William Carroll, one of LIAM's lobbying objectives was to "make sure that we have a continuing flow of information to the legislators so that there will never be any doubt in their mind as to where we stand and why we stand on a particular position." LIAM also wanted to be known on Beacon Hill as "the primary spokesman for the life and health insurance industry in the commonwealth."

Carroll planned this dinner, at the suggestion of William Sawyer. Sawyer was the legislative agent for John Hancock Mutual Life Insurance Company, one of LIAM's largest members. Sawyer was involved in the strategy for passage of H.53. Further, one of the other attendees was Donald Flanagan, a legislative agent who had informed Carroll in January 1993, that his client, the Massachusetts Association of Life Underwriters, was concerned about passage of H.53, and that the client wanted to coordinate lobbying strategy with LIAM. Thus, three of the planners to this particular dinner were involved in a coordinated lobbying strategy to win expedited passage of H. 53. Finally, Carroll discussed the dinner with other legislative agents or interested corporate parties, Francis Carroll, Marcy McManus, and Arthur Lewis, prior to the dinner. Prior to the dinner, these three individuals had volunteered to contribute toward the meal.

Furthermore, we conclude, from our review of the record, that the identity of the legislators who attended the dinner and their respective committee assignments was not coincidental or random. William Carroll testified that his decision, in part, whether to attend an NCOIL conference, depended upon the identity of the Massachusetts legislators who also attended the conference. William Carroll also testified it was important to him, when lobbying, that contacts were made with the chairmen of a committee and those legislators who understood the issues and could convey those issues to other legislators. The LIAM Legislative Counsel Advisory Committee also had discussions about which legislators to approach and which legislative agents would talk to which legislators, depending on the rapport and relationship individual lobbyists had with particular legislators.

All of the dinner guests were from Massachusetts. None of the dinner guests were personal friends of any of the legislative agents who attended. The only attendees were Massachusetts's legislative agents, legislators, and some family members.

William Carroll, in 1991 – 1993, knew and had lobbied all or most of the attendees before the dinner.³⁷

Representative Thomas Walsh served on a sub-committee studying the NAIC program. Representatives Mara and Walsh were the Chair and Vice Chair respectively, of the Insurance Committee where the bill was pending. The parties stipulated that Representative Cass was also an Insurance Committee member. Further, in February 1993, William Sawyer had identified Representative Cox, another attendee at the dinner, as a key legislator in this particular bill process. He was also a member of the Committee on Bills in Third Reading, the last committee to consider H. 53 before it went to the full House, and the Committee where there would be an opportunity to make amendments or technical changes. Representative Poirier was a member of the House Ways and Means committee, which would consider H. 53 because of financing aspects in the bill. LIAM's intended target date for passage by House Ways and Means was April 15, 1993. Other guests were representatives from legislative committees that would also take an important role in moving H. 53 forward.

Luke Dillon had been lobbying Representative Mara about the need for an early hearing date for this legislation. At least Representatives Walsh and Mara, at the time of the dinner, knew that LIAM wanted early passage of the bill and that the bill was important to LIAM.

Additionally, LIAM considered this dinner to be a business expense. The dinner was not planned as part of the conference and was not on the agenda of the conference. Given the cost to dine at this Ritz Carlton restaurant,³⁸ and of this particular dinner, we draw an inference that the location was selected to impress the attendees. William Carroll did not ask any legislator to pay for his and/or his spouse's meal and no legislator offered to or did contribute to the dinner.

Nine days after this dinner, on March 22, 1993, Carroll and the Chairman of LIAM's Board of Directors testified before the Insurance Committee. LIAM identified technical changes that it wanted to the bill when it reached the Committee of Bills in the Third Reading. LIAM amended its timetable and hoped for passage around Labor Day. H. 53, despite its technical complexity, was reported out of the Insurance Committee with a favorable recommendation on June 16, 1993, less than two months after the hearing on the bill. The bill contained many changes recommended by LIAM. Following the Insurance Committee report, LIAM intended to "make a special effort on the House side to move H. 5220 (the successor to H. 53) expeditiously."³⁹

On the motion of Representative Mara, certain amendments were approved and the bill passed the House on November 4, 1993. H. 5200, was passed by the Senate and sent to the Governor for signature on November 6, 1993.

The Respondent argues that the record does not support a finding that the legislators knew who was paying for their meals.⁴⁰ As we stated earlier, the relevant issue is not the legislators' knowledge or intent, but LIAM's intent. We acknowledge

that no legislation was discussed at the dinner. However, weighing the circumstantial evidence and the reasonable inferences derived from the evidence, we conclude that LIAM (with the assistance of William Sawyer and Donald Flanagan) took advantage of the timing between the conference and the Insurance Committee hearing on H. 53 to plan and give an expensive dinner to a select group of Massachusetts legislators, who would be influential in the passage of H. 53. LIAM knew it needed to create a strong industry presence and needed to influence these particular legislators to expedite a complex piece of legislation outside the normal pace of the Legislature. Further, it is more likely than not that LIAM was trying to influence official actions surrounding H. 53, rather than other pieces of legislation in 1993. According to testimony and LIAM documents, H. 53 was LIAM's most important legislative initiative in 1993.

Accordingly, we conclude that the Petitioner has proven, by a preponderance of the evidence, that LIAM violated G.L. c. 268A, § 3(a) when it gave legislators a meal at the Amelia Island Ritz Carlton.

We now address the remaining meals in chronological order.

July 21, 1989 Copley Place Marriott Boston, Massachusetts Dinner

1. Additional Findings

We make the following additional findings based on the preponderance of the evidence:

152. On July 21, 1989, William Carroll and his wife and Representative Francis Woodward and his wife attended the opening session and reception at the NCOIL conference at the Boston Copley Place Marriott Hotel.

153. Most of the other attendees at the opening reception left to attend a Boston Red Sox game at Fenway Park. William Carroll had earlier purchased 10 tickets for an NCOIL pool of tickets to distribute to conference attendees. Neither the Carrolls nor the Woodwards attended the Red Sox game. A number of conference attendees from out of state attended the baseball game.

154. William Carroll could have attended the Red Sox game, which would have afforded him an opportunity to meet other Massachusetts and out-of-state conference attendees.

155. At the end of the opening reception, William Carroll and his wife had a conversation with Representative Woodward and his wife. The two couples spontaneously decided to have dinner together at the Marriott Hotel restaurant.

156. Prior to the Carrolls' and the Woodwards' conversation, Mr. Carroll had not made any dinner reservations.

157. The Marriott Hotel restaurant selected by the Carrolls and Woodwards was physically located close to the area where the NCOIL reception was being held.

158. No legislation was discussed at the dinner.

159. At the time of the July 21, 1989 Marriott Hotel dinner, William Carroll had known Representative Woodward for four years and Mrs. Woodward for a lesser period of time.

160. William Carroll initially met Representative Woodward in 1984. The two men had a cordial relationship. However, although they lived in adjoining towns, they did not socialize with each other.

161. Prior to 1989, William Carroll had testified before Representative Woodward's committee, had provided written testimony to Representative Woodward, and had met at the State House with Representative Woodward to discuss legislation.

162. Between 1987 and 1989 LIAM strenuously opposed bills in the Legislature and regulations at the Division of Insurance concerning the confidentiality of HIV-related information handled by the insurance industry and restrictions on the use of such information in the indemnity process.

163. On March 6, 1989, Carroll and Steven Tringale, the LIAM Vice President for Health Policy, testified before the Insurance Committee about H. 4901. LIAM opposed three aspects of H. 4901: a ban on AIDS testing; a broad delegation of rule-making authority to the Insurance Commissioner; and restrictions on underwriting.

164. On March 6, 1989, LIAM requested that the Insurance Committee permit LIAM to work with the Committee to develop a re-draft of H. 4901, addressing issues of confidentiality, informed consent, and the NAIC guidelines on sexual orientation.

165. In 1989, on LIAM's request, Representative Frank Emilio filed House No. 609, a bill incorporating provisions of the NAIC model privacy statute. H. 609 was thought to protect consumer privacy by, among other things, requiring insurers to provide notice of insurance information practices to insurance applicants, requiring notification to an applicant of reasons for an adverse indemnity decision, limiting disclosure of personal information, and providing for insurer liability for damages caused by unauthorized disclosure of information. The bill was sent to a study committee.

166. In 1989, Senator Lois Pines also filed a privacy bill supported by the Civil Liberties Union of Massachusetts. LIAM strongly advocated against this bill, providing testimony and mounting a grass roots campaign by insurance agents against the bill. As a result of the opposition the bill remained in the Commerce and Labor Committee, which was chaired by Senator Pines.

167. During the week of July 17, 1989, the House approved an amendment to the universal health care laws, (chapter 23) that was sponsored by Representative Woodward. The amendment would delay implementation of the law for two years. LIAM's position on the universal health care bill was one of "non-opposition" or "unenthusiastic support."⁴¹

168. In 1989, the Legislature considered S. 715, a bill that would have required commercial insurers to provide lower rates for non-smoking individuals for individual life and accident and health insurance policies. On June 22, 1989, the Insurance Committee had released the bill with a recommendation that it ought not to pass.

169. On October 10, 1989, S. 715 was the subject of a floor fight in the House of Representatives. A motion to report the bill to a third reading failed. Representatives Woodward and Walsh opposed the bill before the House of Representatives.

170. LIAM opposed S. 715 on the grounds that the bill would create unnecessary government regulation of underwriting and increase the costs of insurance products. LIAM strenuously lobbied against this bill.

2. Discussion

On July 21, 1989, at the end of an opening session and reception of an NCOIL conference, William Carroll and his wife and Representative/Insurance Committee Chairman Francis Woodward and his wife met outside the reception room. Carroll had known Woodward for approximately four years and had testified before and provided lobbying materials to Woodward over the years.

Most of the conference attendees were leaving to go to a Red Sox baseball game. The Carrolls could have gone to the game, which would have given Mr. Carroll an opportunity to meet other Massachusetts and out-of-state conference participants. However, the Carrolls and the Woodwards decided to stay at the hotel to have dinner together. Carroll treated this dinner as a business expense and was reimbursed the cost by LIAM.

This dinner was qualitatively different from the other dinners described in this Decision and Order. Unlike the other dinners, Carroll did not plan this dinner, make prior reservations, or select an impressive, prestigious location. The dinner was a spontaneous unexpected occurrence.⁴² However, we also note that Carroll treated this meal expenditure as a business, rather than a personal expense. The inference is raised that Carroll saw this dinner, which began spontaneously, as an opportunity to build good will for future legislative initiatives.

One pending initiative was S. 715. Prior to this dinner, on June 22, 1989, the Insurance Committee that Woodward chaired had released S. 715, a bill to provide lower insurance rates to individuals who were non-smokers. LIAM opposed this bill and the

Insurance Committee recommended that the bill ought not to pass. This bill became the subject of a debate on the floor of the House of Representatives on October 10, 1989. Representative Woodward was one of the House members who led the successful defeat of the bill. LIAM, in preparation for the floor debate, had strenuously lobbied members of the Legislature.

Also, just prior to the dinner, on July 17, 1989, the House of Representatives approved an amendment to the universal health care laws that would delay implementation of the law for two years. Representative Woodward sponsored this amendment. LIAM had not taken a strong position on passage of the universal health care bill.

After viewing the totality of the circumstances and weighing the circumstantial and direct evidence, we are unable to find that the Petitioner has proven sufficient links between the payment of a spur-of-the-moment dinner and any specific official actions LIAM wanted to influence regarding S. 715. Certainly it is beneficial for LIAM to have the Chairman of the Insurance Committee argue a position, consistent with LIAM's position, before the House of Representatives. But this argument was several months after this meal and the record does not reflect what lobbying actions LIAM took between the dinner and the debate or any contacts Carroll or LIAM had with Representative Woodward, other than this unplanned dinner. There is not enough evidence for us to conclude that LIAM paid for this meal "in the hope that, when the particular actions move to the forefront, [Woodward] will listen hard to, and hopefully be swayed by, [LIAM's] proposals, suggestions and/or concerns."⁴³ Also, the evidence is not sufficient to conclude that the meal was a reward for the Insurance Committee's recommendation, in June 1989, that S. 715 ought not to pass.

Additionally, in light of LIAM's professed lack of interest in the universal health care bill, we can not conclude that Carroll paid for Representative Woodward and his wife's meals as a reward for action Woodward took to delay the universal health care bill during the week preceding the dinner. Our view of the evidence leads us to conclude that it is more likely that Carroll used the opportunity of the spontaneous dinner to develop good will. Consequently, we find that there is insufficient evidence to conclude that LIAM violated G.L. c. 268A, § 3(a) by paying for Representative Woodward and his wife's meal.

December 20, 1989 Locke Ober Restaurant Dinner

1. Additional Findings

We make the following additional findings based on the preponderance of the evidence:

171. On November 28, 1989, the Insurance Committee held a hearing on S. 2099. S. 2099 proposed a statewide freeze for rates on individual and small group

insurance products. S. 2099 was reported out of the Insurance Committee, accompanied by a new draft, on December 28, 1989.

172. On November 28, 1989, Stephen Tringale, Vice President of Health Policy for LIAM, testified in opposition to S. 2099. Mr. Tringale testified that the proposed legislation would dramatically re-structure the regulation, pricing, underwriting, and financing of the health financing system and would not stabilize health care coverage in the marketplace. LIAM proposed that any subsidies in the health insurance area be explicit, publicly accountable and need-based.

173. The December 20, 1989 dinner at Locke Ober Restaurant was a spontaneous social occasion.

174. Luke Dillon had a personal friendship with Robert Smith.

175. The 1989 Locke-Ober dinner was reimbursed by LIAM as a business expense because Luke Dillon considered the dinner an important way to foster relationships with legislators and staffers with whom he will have meetings and before whom he testified at hearings.

176. In 1989, in Luke Dillon's work, it was important to have a good relationship with Representative Francis Mara, who was Vice Chairman of the Insurance Committee and a member of the Health Care Committee.

177. In 1989, Robert Smith served as an Insurance Committee staff person. In his job he prepared summaries of pending bills in the committee, provided explanations of proposed bills, and participated in drafting proposed legislation. From time to time Luke Dillon discussed the language of proposed bills with Smith. Between 1989-1993, Mr. Smith was a source of information for Luke Dillon and LIAM.

178. During 1989, Luke Dillon took Robert Smith out to lunch or dinner on occasions other than December 20, 1989. One such occasion was December 13, 1989.

179. In July 1991 Smith spoke with Frank O'Brien, Government Relations counsel of LIAM, about the strategy surrounding some bills.⁴⁴ Mr. Smith advised that a member of the House had filed a bill about unisex rates. According to Frank O'Brien "in Bob's opinion this does not portend well for the industry. He is of the opinion that if the industry uses up its political muscle on this bogus issue, then it will be weakened and may have a significantly harder time defeating issues which we have successfully blocked in the past. Bob specifically pointed to the AIDS issue as an example of this."

180. Smith, in July 1991, also alerted Frank O'Brien that there would be attempts in 1992 to use financial assessments against insurance companies to fund specific areas of the Division of Insurance. He advised O'Brien that he had personally made an effort to remove an outside section of the budget which would

have assessed the insurance industry for certain costs incurred by the Attorney General's office and replaced it with a section which would have assessed a similar amount of money but funneled it to the Division of Insurance.

181. In July 1991 Smith also advised Frank O'Brien that the issue of mandated benefits was "finally going the industry's way." According to O'Brien, Smith "points to the outside sections in the budget which would have removed several of the most costly mandated benefits as being evidence of this. Although he doesn't believe that the legislature has the stomach to remove any of the current mandated benefits entirely, he believes that the legislature will approve some sort of scheme which would allow companies to issue low option policies which would not include some of the mandated benefits now required."

182. Robert Smith advised Frank O'Brien that legislation to provide a subsidy to senior citizens through the uncompensated care pool, would not pass in 1991. He told Frank O'Brien that "the longer the length of time between the 67% rate increases suffered by seniors a year ago, the less amount of pressure is brought to bear on the legislature to aid seniors."

183. In 1991 Frank O'Brien graded certain contacts as receptive to LIAM's interests. Robert Smith of the Insurance Committee received a grade of "A".

2. Discussion

On December 20, 1989, Luke Dillon, the LIAM contract lobbyist, hosted a dinner at Locke Ober's Restaurant for Insurance Committee Vice Chairman Mara and Insurance Committee staff person Robert Smith. Dillon and Smith were personal friends. The dinner was not a planned event and did not coincide with a professional conference, but it was held at a prestigious Boston restaurant.

The record reflects that this dinner was held at the end of the legislative session. Several bills of interest to LIAM, such as an AIDS privacy bill and S. 715, regarding non-smoker insurance rates, had already passed through the Committee. One of the bills that remained pending in the Insurance Committee was S. 2099. This bill proposed a statewide freeze for rates on individual and small group insurance products. LIAM opposed this bill. Eight days after this dinner, a new draft of S. 2099 was reported out of the Insurance Committee.

Although we are able to identify specific matters pending in the Legislature in which LIAM had an interest and on which LIAM had taken a position, there is insufficient circumstantial or direct evidence to conclude that Dillon provided the meal to influence or induce any of Representative Mara's or staffer Smith's present or future official actions. For example, from the timing between the dinner and the release of a new draft of S. 2099, a reasonable inference can be drawn that members and staff of the

Insurance Committee were working on the draft at the time of the dinner. But, there is a dearth of evidence concerning LIAM's interest in or participation or lobbying activities around the new legislative draft. Additionally, there is no evidence of what the changes in the new draft were. Thus, there is insufficient evidence connecting payment of the dinner with LIAM's intent to influence Mara's or Smith's official actions concerning S. 2099.

Consequently, we find that the Petitioner has not proven, by a preponderance of the evidence, that LIAM violated G.L. c. 268A, § 3(a) when it reimbursed Dillon for Mara's and Smith's meals at Locke Ober's Restaurant.

March 22 and 23, 1990 Fountain's Restaurant, Tulsa, Oklahoma Dinners
November 24, 1990 Stouffer Restaurant Orlando, Florida Dinner

1. Additional findings

We make the following additional findings based on the preponderance of the evidence:

184. The March 1990 NCOIL conference in Tulsa, Oklahoma was sparsely attended.

185. On March 22, 1990 William Carroll hosted a dinner at the Fountains Restaurant with Representative Woodward and his wife and William Sawyer and his wife.

186. On March 23, 1990, William Carroll hosted a dinner for William Sawyer and his wife, Representative Woodward and his wife, and Thomas Driscoll, who was a representative of Liberty Mutual Insurance Company, at the Fountains Restaurant.

187. The group attended the same restaurant on each evening because of a scarcity of restaurants in Tulsa, Oklahoma.

188. On March 22 and 23, 1990, William Carroll could have gone to dinner with NCOIL attendees from states other than Massachusetts, but he chose, each day, to attend dinner with a group entirely from Massachusetts.

189. William Carroll arranged for the November 24, 1990 dinner at the Stouffer Hotel in Orlando, Florida. At the time of the arrangements Mr. Carroll did not know how many people would attend the dinner.

190. The Stouffer dinner was a social event and most, but not all, of the attendees were from Massachusetts. No legislation was discussed during dinner.

191. During 1990, LIAM was following certain legislative bills, including: an antitrust bill pending in the Commerce and Labor Committee; utilization review bill; a

health bill sponsored by Representative Mara; AIDS testing legislation, unisex insurance bill; bill providing life insurance to children with catastrophic illness.

192. In 1990, the Insurance Commissioner, Senator Pines and LIAM, through Representative Emilio, re-filed their respective privacy bills regarding AIDS privacy in the Legislature. The Commerce and Labor Committee refused to transfer the Pines bill to the Insurance Committee as it believed the Insurance Committee was biased toward the industry. The Insurance Committee reported a draft that was unacceptable to all interested constituencies. After strong industry opposition, Senator Pines' bill was, again, not reported out of the Commerce and Labor Committee.

193. H.553 (Emilio bill) was based on the NAIC model privacy act. LIAM developed a brochure, dated May 9, 1990, explaining H. 553 and supporting passage of the bill. The Emilio bill required detailed disclosure authorization forms, required notification to applicants about what types of personal information insurance companies could collect, required notification of the reasons of an adverse indemnity decision, included consumer rights to access personal information, included enforcement rights in the Division of Insurance, and included consumer rights to pursue civil actions for violations of the law.

194. As of May 3, 1990, LIAM was closely following the Emilio bill in the Insurance Committee.

195. As of May 3, 1990, the LIAM Executive Committee had agreed to try and move the Emilio bill favorably out of the Insurance Committee and to try and substitute the NAIC language for the Pines privacy bill in the Commerce and Labor Committee.

196. At the May 3, 1990 LIAM Executive Committee meeting, the members discussed the development of a public relations policy regarding the privacy bill. Between May 3, 1990 and June 7, 1990, William Carroll and others met with the editorial staff of the Boston Globe newspaper regarding the privacy issue.

197. As of September 24, 1990, the Emilio bill had not reached the Governor's desk and remained in the Legislature.

198. In fall 1990 LIAM met with representatives of the Division of Insurance and the Office of Consumer Affairs to write a consensus privacy bill.

199. LIAM planned to re-file the Emilio bill in the 1991 legislative session with a different Legislative sponsor as Representative Emilio had lost his September 1990 primary race and was not re-elected to the Legislature.

200. The deadline for filing legislation for the 1991 legislative session by parties other than state agencies was December 5, 1990.

201. As of November 14, 1990, in addition to the LIAM privacy bill, LIAM had two other bills ready for filing in the 1991 session. The other bills were the valuation of capital stock of subsidiaries of insurers, previously sponsored by Representative John Cox and the bill permitting life insurance companies to exchange policies issued with policies issued by affiliated life insurers, previously sponsored by Representatives Driscoll, Constantino and Woodward.

202. In 1990, LIAM sponsored the following bills: H. 553 (An Act Relative to Insurance Information and Privacy Protection); H. 734 (An Act Relative to Permitting Insurers to Value Real Estate at an Assessed Value); H. 1349 (An Act to Permit Life Insurance Companies to Exchange Policies Issued with Policies Issued by Affiliated Life Insurers); H. 2157 (An Act Relating to the Valuation of Capital Stock of Subsidiaries of Insurers); H. 3427 (An Act Establishing a Market for Taxable Bonds of the Commonwealth and Reforming the Taxation of Domestic Life Insurance Companies); H. 5649 (An Act Relative to the Investments of Insurance Companies); H. 5905 (An Act Further Regulating the Acquisition of Capital Stock by Life Insurance Companies).

2. Discussion

The Petitioner has alleged that LIAM violated § 3 on three occasions in 1990. As previously found by the Commission, William Carroll hosted dinners on two consecutive nights at the Fountains Restaurant in Tulsa, Oklahoma for Representative Woodward and his wife. Carroll also hosted a dinner at the Stouffer Restaurant in Orlando, Florida in November 1990. Representative Emilio and his spouse attended the meal in Orlando Florida. Each of these meals was of substantial value. However, as discussed below, the evidence does not support a finding that each meal was given to influence present or future official actions, or to reward past official actions of Representatives Woodward or Emilio.

At the time of the March Oklahoma dinners, Woodward was Chairman of the Insurance Committee. At the time of the dinner, Carroll had known Woodward, his wife, Sawyer, and his wife for several years and had hosted a dinner in Boston in 1989 for Woodward and his wife. Carroll could have had dinner on either or both of those evenings with other conference attendees. Although Carroll testified that he considered the dinner to be a social occasion, he treated the dinner as a LIAM business expense.

The record reflects numerous bills pending in the Legislature before and after these dinners. However, the Petitioner has not identified any specific past, present or future actions relating to a specific piece of legislation that LIAM wanted Woodward to take or that Woodward had taken. A reasonable inference can be drawn that LIAM had a substantial interest in the AIDS privacy bill, as LIAM drafted a version of the legislation and developed a media policy to promote its legislation. But, there is insufficient evidence linking payment of Woodward's dinner to specific actions LIAM wanted Woodward to take regarding this particular bill. Accordingly, although the record would support a finding that LIAM was seeking to foster generalized good will, the record does

not support a finding that LIAM paid for the dinner “for or because of an official act performed or to be performed” by Representative Woodward. Therefore, we conclude that the Petitioner has not proven that LIAM violated G.L. c. 268A, § 3(a) when it paid for the two March dinners for Representative Woodward and his wife.

At the time of the Florida dinner, Carroll had known Representative Emilio for many years, as the Representative had served on the Insurance Committee for 10 years. He was also the sponsor of H.553, the LIAM bill concerning AIDS privacy and confidentiality. As indicated above, LIAM had a strong interest in passage of this bill.

However, at the time of the November Stouffer Restaurant dinner, Representative Emilio had lost his primary election and was going to be leaving office, less than two months later, in January 1991. Additionally, as of November 15, 1990, nine days before the dinner, LIAM had concluded that its privacy bill would not be released by the Insurance Committee or passed in 1990 and it was seeking a sponsor to re-file the bill for 1991. Thus, we conclude that LIAM did not pay for Representative Emilio and his spouse’s meals in order to influence Emilio to take some present action or to induce him to take future action regarding the privacy bill. As indicated above with the Woodward 1990 dinners, the Petitioner has not identified any other particular official actions LIAM wanted Emilio to take regarding any other legislation that was pending. Moreover, there is insufficient evidence to support a finding that the dinners were given to reward Representative Emilio for any prior actions he had taken.

We conclude that the Petitioner has not proven, by a preponderance of the evidence, that LIAM paid for the Stouffer Restaurant meals for Representative Emilio and his spouse “for or because of an official act performed or to be performed” by Emilio. Accordingly, LIAM, by paying for the Stouffer Restaurant dinner, did not violate G.L. c. 268A, § 3(a).

January 8, 1991 Retirement Dinner for Representative Emilio

1. Additional Findings

We make the following additional findings based on the preponderance of the evidence:

203. Until 1990, Representative Frank Emilio (Emilio) had served ten years on the Insurance Committee. According to William Sawyer, John Hancock’s lobbyist, Representative Emilio had been very helpful to John Hancock.

204. The purpose of the January 8, 1991 dinner and gift of golf clubs to former Representative Emilio was to recognize Emilio’s retirement from the Legislature. Emilio had been an insurance agent and was well liked by insurance lobbyists.

205. William Carroll did not attend the Emilio retirement dinner.

206. The 1991 Emilio retirement dinner was unusual, as LIAM had never been involved in such a legislative retirement dinner before or after the Emilio dinner.

207. William Sawyer notified William Carroll of LIAM's share of the gift and dinner after the dinner was held.

208. Neither William Carroll nor any of the LIAM staff were personal friends with Representative Emilio in 1990-1991.

2. Discussion

As found by the Ethics Commission in its December 1997 Decision and Order, LIAM, with other legislative agents for the insurance industry, contributed toward a gift of golf clubs and a dinner at Joe Tecce's Restaurant on January 8, 1991. LIAM's contribution was of substantial value.

At the time of the gift and the dinner, Emilio was no longer a public official as he lost his primary election in September 1990. The issue is whether the golf clubs and dinner were given with an intent to reward or influence a specific identifiable official act. Having reviewed the totality of the evidence, we are constrained by the Scaccia decision to conclude that the Petitioner has not proven, by a preponderance of the evidence, that this gift and dinner were "for or because of" a specific official act.

As discussed above, in 1989 and 1990, Emilio had agreed to sponsor privacy legislation drafted by LIAM, concerning the confidentiality of HIV-related information handled by insurance companies and the restrictions on the use of said information in the indemnity process. LIAM was very interested in this legislation, to the extent of not only lobbying the Legislature, but also developing a public relations press strategy to promote its bill. Although Emilio agreed to sponsor the legislation, there is no additional evidence regarding Emilio's actions relating to the bill or any interaction he had with LIAM regarding the bills.

However, there was other testimony that the stated purpose of the dinner was to celebrate Emilio's retirement. Emilio had been a member of the Insurance Committee for ten years. Prior to becoming a legislator, Emilio had been an insurance agent. William Sawyer believed that Emilio had been a good friend to John Hancock Life Insurance Company while he was a legislator. At the time of the gift and dinner, Emilio was no longer a public official and was no longer able to take official acts concerning legislation of interest to LIAM.

Weighing all of the evidence, we can not conclude that LIAM's contribution was given specifically as a reward for his past actions on the privacy legislation and not as a gesture of good will for Emilio's long service in the Legislature and in the Insurance Committee. Therefore, the Petitioner has not proven, by a preponderance of the

evidence, that LIAM violated G.L. c. 268A, § 3 by contributing to the gift of golf clubs and dinner, in order to reward Emilio for a specific past official act.

November 16, 1991 Avanti Restaurant Scottsdale, Arizona Dinner

1. Additional Findings

We make the following additional findings based on the preponderance of the evidence:

209. William Carroll arranged for the November 16, 1991 dinner at the Avanti Restaurant in Scottsdale, Arizona. At the time of the arrangements Carroll did not know how many people would attend the dinner.

210. The individuals attending the November 16, 1991 dinner at the Avanti Restaurant were all from Massachusetts.

211. In 1991 LIAM had established a separate Privacy Task Force under Frank O'Brien.

212. As of August 15, 1991, following negotiations, the Commerce and Labor Committee transferred Pines' AIDS privacy bill to the Insurance Committee. The Insurance Committee reported out of committee a privacy bill that represented the consensus bill drafted by LIAM and the Division of Insurance.

213. In 1991 a privacy bill consistent with LIAM's and Division of Insurance negotiations was passed by the Legislature and signed into law (Chapter 516 of the Acts of 1991) by the Governor.

214. In 1991 LIAM was following the progress of H. 6100. The Health Care Committee reported the bill out of committee in September 1991. The bill addressed the hospital payment system and small group health insurance market reform. LIAM had offered amendments to the bill to maintain hospital cost controls; phase-in Blue Cross Blue Shield freedom to contract over two-years; retain the uncompensated care pool, separate the small group section, exclude out-of-the-state associations; revise rating requirements; and restructure the reinsurance pool. As of November 5, 1991 the bill remained in the House Ways and Means Committee.

215. On November 5, 1991, the LIAM Health Insurance Advisory Committee, with member William Sawyer present, discussed how to quicken the process of H. 6100. At the time Blue Cross had extended its master contract with each hospital until November 30, 1991 and the rate setting commission had issued emergency regulations regarding hospital charges and the uncompensated care pool. The LIAM Health Insurance Advisory Committee discussed the possibility of challenging either of the temporary extensions in order to create a "crisis" environment and quicken passage of the legislation.

216. Representative Finneran reported H. 6100 out of the Ways and Means Committee with a new draft (H. 6280) on November 18, 1991. On November 19, 1991 the bill was taken out of order and ordered to a third reading. On November 21, 1991 further amendments were considered and the bill was passed to be engrossed.

217. The Senate passed H. 6280 with amendments on December 13, 1991. The House rejected the Senate amendments. On December 17, 1991 a conference committee was created, which reported the bill on December 21, 1991. Both branches of the Legislature enacted the bill on December 23, 1991.

218. On March 6, 1991 William Carroll testified, before the Joint Committee on Taxation on behalf of LIAM in favor of H. 4076, An Act Reforming the Taxation of Domestic Life Insurance Companies. The purpose of the bill was to repeal the net investment income tax levied against domestic life insurance companies. LIAM filed a bill to repeal the net investment income tax every year during William Carroll's tenure at LIAM.

219. In 1991, neither Representatives Woodward, Pacheco, Ranieri, nor Senator Havern served on the Health Care Committee or on the Ways and Means Committee.

220. In 1991 Frank O'Brien believed LIAM had a strong relationship with the Legislature and was able to "influence the legislature through a combination of timely PAC contributions, accurate technical advice, and a visible and substantial presence on the hill."

2. Discussion

The Commission has previously found that, on November 16, 1991, William Carroll hosted a dinner at the Avanti Restaurant in Scottsdale, Arizona. LIAM paid for this dinner. In attendance were four legislators: Senator Robert Havern and his spouse; Representative Francis Woodward and his spouse; Representative Marc Pacheco; and Representative Daniel Ranieri and his spouse. This meal was of substantial value.

During 1991 there were at least two specific pieces of legislation in which LIAM had a substantial interest. As discussed above, for several years LIAM had been lobbying on behalf of the privacy bill it drafted. Finally, in 1991, a bill, consistent with LIAM's wishes, was passed and signed by the Governor.

Additionally, in November 1991, LIAM was lobbying for H. 6100, a bill addressing the hospital payment system and small group health insurance market reform. The bill had been reported out of the Health Care Committee, but was stalled in the House Ways and Means Committee. The LIAM Health Care Advisory Committee was so concerned about quickening the process of this bill that William Sawyer suggested manufacturing a "crisis" atmosphere to place pressure on the Legislature to pass the bill. William Sawyer was one of the attendees at the dinner.

Just two days after this dinner, the bill was reported out of the House Ways and Means Committee as a different draft. On November 19, 1991 the bill was taken out of order and ordered to a third reading. On November 21, five days after the dinner, the House of Representatives passed the bill.

The evidence supports a finding that LIAM had a strong interest and was or had expended a great deal of effort seeking passage of these bills. Also, the timing between the dinner and the passage of H. 6100, as well as the fact that three days after the dinner, this particular bill was taken out of order and expedited, is suspect. But the evidence does not support a connection between the dinner and specific official acts that LIAM sought to influence of any of the legislators attending the dinner. For example, none of the legislators attending the dinner were on the Health Care Committee or the Ways and Means Committee where the bill was pending. There is no evidence that any of the legislators who attend the dinner spoke about the bill to any of the legislators who were on the Ways and Means and Health Care Committees, or to Representative Finneran, who reported the bill out of committee. There is no evidence whether any of the legislators voted on the final draft of the bill. There is no evidence that LIAM had approached any of these legislators on an individual basis to lobby on behalf of this bill. There is no evidence whether LIAM was or was not successful in obtaining the amendments it proposed. Any evidence offered on any of the above would be relevant on the issue of LIAM's intent to influence a specific act.

Additionally, only one of the legislators attending the dinner, Representative Pacheco, was serving on the Insurance Committee in 1991 when the privacy bill was pending. Representative Pacheco was not the Chairman or Vice Chairman at the time. There is no evidence of any specific official act that LIAM was seeking to influence, other than good will.

Similarly, although William Carroll had testified on behalf of the net investment income tax bill before the Taxation Committee six months prior to the dinner, and Senator Havern was a member of the Taxation Committee, there is no evidence of the status of the bill at the time of the dinner, any official actions Senator Havern had taken regarding the bill, and any present or future actions he would take regarding the bill.

In conclusion, we find that the Petitioner has not proven, by a preponderance of the evidence, that LIAM violated G.L. c. 268A, § 3(a) when it paid for a dinner at the Avanti Restaurant for Senator Havern and his wife, Representative Woodward and his wife, Representative Ranieri and his wife, and Representative Pacheco.

D. Conclusion

From our review of the entire record, we conclude by a preponderance of the evidence that LIAM violated G.L. c. 268A, § 3(a) when it paid for the May 13, 1992 Four Seasons Restaurant dinner and the March 13, 1993 Ritz Carlton dinner. We also conclude that the Petitioner has not proven, by a preponderance of the evidence, that LIAM violated G.L. c. 268A, § 3(a) on the remaining seven occasions.

We are constrained by the Scaccia decision in reaching this conclusion. We are troubled by LIAM's repeated gifts and entertainment expenditures in order to develop the access to the Insurance Committee and to the Insurance Division that LIAM enjoyed. One example of that access is described in an internal LIAM memorandum dated July 24, 1991, authored by Frank O'Brien. Robert Smith was a staff member to the Insurance Committee and he provided LIAM lobbyists with inside information about the workings and deliberations of the Insurance Committee. He also made recommendations about LIAM's legislative strategy. It is unlikely that ordinary citizens and consumers would enjoy such access to the Insurance Committee. According to LIAM memoranda, it was unsuccessful in convincing the Commerce and Labor Committee to transfer Senator Pine's AIDS privacy bill to the Insurance Committee because it was the perception of legislators on the Commerce and Labor Committee that other legislators on the Insurance Committee were biased toward the insurance industry. Other internal LIAM memoranda revealed LIAM's confidence in the access it had developed at the Division of Insurance in 1992-93, when it proposed to take a substantive role in drafting, not just commenting upon, the regulations required by NAIC—regulations to which the insurance industry would be subject.

All of these activities reflect the New York Special Committee's concern, expressed in its 1960 report, and shared by the Massachusetts drafters who included § 3 in the conflict of interest law, that "open and known channels for decision-making are frustrated when a government official appears to perform an ordinary role but is in fact responding to the demands of others to whom he is secretly economically tied. It is not simply that he or the outside group makes money out of it. They may not. It is that the public processes of government are being subverted while policy is made silently by forces not known or responsive to the electorate."⁴⁵

We do not condone LIAM's conduct. We simply find that the majority of the allegations were not proven by a preponderance of the evidence under the standards established by the Supreme Judicial Court. However, our review of the record in its entirety leads us to conclude that LIAM, by its conduct, undermined the spirit of the conflict of interest law. In our opinion, when professional lobbying activities become interwoven with private lavish entertainment, under the guise of good will, public confidence in government is eroded. Citizens can never be sure whether a government decision is made on the merits or is influenced by repeated entertainment over time, given to the decision-makers by those with a substantial stake in the outcome. We note, with approval however, that the Legislature in 1994 amended G.L. c. 3, § 43 to further limit what a legislative agent can give to a public official or public employee.⁴⁶

E. Order

Pursuant to the authority granted it by G.L. c. 268B, § 4(j), the State Ethics Commission rescinds the civil penalty levied on December 16, 1997 and hereby orders the Life Insurance Association of Massachusetts to pay the following civil penalty for violating G.L. c. 268A, § 3(a) on two occasions. We order the Life Insurance Association of Massachusetts to pay to the State Ethics Commission within 30 days of issuance of this Decision and Order, \$2000 for each violation of G.L. c. 268A, § 3(a), resulting in a total civil penalty of \$4000 (four thousand dollars).

//ss// Augustus F. Wagner, Jr., Chair

Christine M. Roach, Vice-Chair

Elizabeth J. Dolan

J. Owen Todd

DATE AUTHORIZED: April 14, 2003

DATE ISSUED: May 12, 2003

NOTICE OF APPEAL

Respondent is notified of its right to appeal this Decision and Order pursuant to G.L. c. 268B, § 4(k) by filing a petition in Superior Court within 30 days of the issuance date.

¹ Commissioner Cassidy participated in the oral argument of this matter, but his term expired during the pendency of these proceedings and he is not a signatory to this Decision and Order.

² Commissioner Todd's term began during the pendency of these proceedings. He has reviewed the relevant portions of the record of the proceedings, the parties' memoranda, and the transcript of oral arguments. He has participated in the deliberations of this matter and is a signatory to the Decision and Order.

³ Life Insurance Association of Massachusetts, 431 Mass. at 1002.

⁴ G.L. c. 268B, § 4(i); 930 CMR 1.01(9)(m)(1).

⁵ Life Insurance Association of Massachusetts, 431 Mass. at 1002. The Court affirmed the Commission's original findings that the entertainment given to the legislators and paid by LIAM were things of substantial value and that the Commission was within its discretion to use \$50 as a benchmark for substantial value.

⁶ Int'l Organization of Masters, etc. v. Woods Hole, Martha's Vineyard & Nantucket Steamship Authority, 392 Mass. 811, 813 (1984) (citations omitted).

⁷ Special Commission on Code of Ethics Report, H. 3650, 8 (1962).

⁸ Association of the Bar of the City of New York Special Committee on the Federal Conflict of Interest Laws, Conflict of Interest and Federal Service, 1960; see, Special Commission on Code of Ethics Report at 8; H.R. No. 748, 87th Cong., 1st Sess. 2 (1961).

⁹ According to the New York Special Committee "a government that plays favorites among its citizens is fundamentally objectionable to American conceptions of the equality of men under law, notions of fair play, and the assumptions of free competition. Few things make an American citizen angrier than to find out that he did not get a fair shake; and a secret personal interest of a deciding official is a kind of dice loading." Id. at 8.

¹⁰ According to the New York Special Committee, "the institutions . . . are, in varying degrees, sensitive to the wishes of different interests in ways that are acceptable and indeed necessary in a democracy. But these open and known channels for decision-making are frustrated when a government official appears to perform an ordinary role but is in fact responding to the demands of others to whom he is secretly economically tied. It is not simply that he or the outside group makes money out of it. They may not. It is that the public processes of government are being subverted while policy is made silently by forces not known or responsive to the electorate." Id. at 9.

¹¹ As the Supreme Judicial Court has recognized “the Legislature’s objective ‘was as much to prevent giving the appearance of conflict’ as to suppress all tendency to wrongdoing.” Scaccia v. State Ethics Commission, 431 Mass. 351, 359 (2000); (citing Selectmen of Avon v. Linder, 352 Mass. 581, 583 (1967)).

¹² The New York Special Committee recommended that gifts, as well as bribes be included in a conflict of interest statute. The New York Special Committee stated:

Regulation of conflicts of interest is regulation of evil before the event; it is regulation against potential harm. These regulations are in essence derived, or secondary--one remove away from the ultimate misconduct feared. The bribe is forbidden because it subverts the official’s judgment; the gift is forbidden because it may have this effect, and because it looks to others as though it does have this effect. This potential or projective quality of conflict of interest rules is peculiar and important.

Conflict of Interest and Federal Service at 19-20.

¹³ Scaccia, 431 Mass. at 355-356.

¹⁴ Schaffer, 183 F.3d at 842.

¹⁵ Scaccia, 431 Mass. at 357

¹⁶ Schaffer, 183 F.3d. at 843.

¹⁷ See, St. 1962, c.779, § 1. The preamble to G.L. c. 268A stated “A public official of a free government is entrusted with the welfare, prosperity, security and safety of the people he serves. In return for this trust, the people are entitled to know that no substantial conflict between private interests and official duties exists in those who serve them.” (emphasis added).

¹⁸ This factor would include whether the occurrence was unusual within the relationship that had been established by the parties.

¹⁹ We note that it is not mandatory that any decision or legislation at issue be controversial.

²⁰ Scaccia, 431 Mass. at 356.

²¹ According to William Carroll, “we just make sure that we have a continuing flow of information to the legislators so that they will never have any doubt in their mind as to where we stand and why we stand on a particular position.”

²² We credit LIAM’s internal business memorandum of August 2, 1991.

²³ Association of the Bar of the City of New York Special Committee on the Federal Conflict of Interest Laws, Conflict of Interest and Federal Service, 1960 at 8-9.

²⁴ We credit an internal LIAM memorandum dated September 21, 1992.

²⁵ We credit an internal memorandum from Carroll to the NAIC Certification Committee Task Force dated April 29, 1992.

²⁶ Id.

²⁷ Id.

²⁸ "Particular matter", any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

²⁹ "Official act", any decision or action in a particular matter or in the enactment of legislation. G.L. c. 268A, § 1(h). (emphasis added).

³⁰ Carroll was concerned that LIAM's message to the Insurance Commissioner would appear to be criticism.

³¹ Carroll testified that he had instructed LIAM employees and legislative agents not to discuss legislation when they took legislators out to lunch or dinner.

³² Schaffer, 183 F.3d at 842.

³³ In the original December 1997 Decision and Order, the Commission did not find credible William Carroll's self-serving testimony that he did not, by hosting dinners, intend to influence any official acts of the dinner attendees. We leave that credibility determination undisturbed because of our view of the totality of the evidence as discussed in this Decision and Order and because one member of the 1997 Commission had acted as the Hearing Commissioner who heard and observed Carroll's testimony.

³⁴ We credit an internal office memorandum dated February 19, 1993 to William Carroll from Frank O'Brien.

³⁵ We credit a June 17, 1993 memorandum from William Carroll to the LIAM Executive Committee.

³⁶ The Supreme Judicial Court has stated that "in order for the commission to establish a violation of G.L. c. 268A, § 3(a) . . . there must be proof of linkage to a particular official act, not merely the fact that the official was in a position to take some undefined or generalized action, such as holding a hearing on proposed legislation that, if passed, could benefit the giver of the gratuity." Scaccia, 431 Mass. at 356. We believe that certain substantive official actions taken surrounding a hearing, nonetheless may be significant. For example, a decision whether or not to hold a hearing in the first instance can be an official act, where the effect of not holding a hearing is not reporting a bill out of committee (and allowing the bill to die). On the facts before us, where it was urgent, not only that a hearing be held, but also that it be expedited because the consequence of delay meant that the Insurance Division's accreditation would be jeopardized and that LIAM's members would suffer economic harm, LIAM was seeking official action from the Legislature.

³⁷ Additional facts raising inferences that this dinner was planned for invited guests are that, by the time Mr. Carroll arrived at the restaurant for dinner, the waitstaff had been notified and had prepared the appropriate number of places for the attendees. Further, the Ritz Carlton was located away from the conference site and the attendees had to drive to the site.

³⁸ William Carroll testified that there were very expensive menu items, prompting him to arrange for a special menu for the dinner in order to control the costs associated with the meal.

³⁹ There were various other bills before other guest legislator's committees in the three weeks after the March 13, 1993 dinner in which LIAM had an interest and was following. For example, Carroll testified about repealing the net investment income tax before Representative Scaccia's Taxation Committee at the end of March. There were also bills of interest before the Health Care Committee.

⁴⁰ We note that when the waitstaff had a question about the meal, they approached William Carroll. The waitstaff gave William Carroll the bill. On both of these occasions other attendees were present.

⁴¹ We credit a July 26, 1989 memorandum from William Carroll to the LIAM Executive Committee.

⁴² We do not imply that a meal that is unplanned will never violate § 3(a). Spontaneity is only one factor and we view the spontaneity of this meal within the context of the totality of the other circumstances surrounding this dinner.

⁴³ Schaffer, 183 F.3d at 842.

⁴⁴ We credit an internal memorandum dated July 24, 1991, authored by Frank O'Brien.

⁴⁵ Association of the Bar of the City of New York Special Committee on the Federal Conflict of Interest Laws, Conflict of Interest and Federal Service, 1960 at p. 9.

⁴⁶ G.L. c. 3, § 43 states:

Notwithstanding the provisions of any general or special law to the contrary, no executive or legislative agent shall knowingly offer or knowingly give to any public official or public employee, as defined in section one of chapter two hundred and sixty-eight B, or to a member of such person's immediate family any gift, as defined in said section one of said chapter two hundred and sixty-eight B, of any kind or nature, nor knowingly pay for any meal, beverage, or other item to be consumed by such public official or employee, whether or not such gift or meal, beverage or other item to be consumed is offered, given or paid for in the course of such agent's business or in connection with a personal or social event